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SUBJECT: NEW ZEALAND: INVESTMENT CLIMATE STATEMENT 2005

REF: STATE 250356

Per reftel, following is post's draft of the 2005 Investor Climate Statement on New Zealand.

Begin draft:

#### OPENNESS TO FOREIGN INVESTMENT

Foreign direct investment in New Zealand is generally welcomed and encouraged without discrimination.

However, certain types of foreign investment are screened by the Overseas Investment Commission (OIC). Commission approval is required for all foreign investments that would result in 25 percent control or more of a business or property valued at more than NZ \$50 million (US \$33.2 million at NZ \$1 = US \$0.6641). Approval also is required for certain land purchases, including land more than five hectares (12.35 acres) or worth more than NZ \$10 million; land on most islands or over 0.2 hectares on or along the foreshore; and, "sensitive" lands more than 0.4 hectares. Sensitive lands include reserves, historic or heritage areas, and land near lakes, related to control of natural resources or considered culturally important to the indigenous Maori population. Restrictions and approval requirements also apply to investments in the commercial fishing industry. OIC consent is based on a national interest determination. No specific performance requirements are attached to foreign direct investment, although the OIC can impose conditions on any investment it approves.

The OIC also monitors foreign investments after approval. If foreign investors are found to have included deceptive statements on approval applications, the High Court can order the disposal of their New Zealand holdings.

Amid a growing public outcry about the purchases of coastal properties by foreign buyers, the New Zealand government in November 2003 launched a review of OIC's powers. That review led to proposed legislation in November 2004 that would raise the minimum threshold at which scrutiny of proposed business purchases is required, but toughen the screening and monitoring of land purchases. Under the legislation, the threshold for screening non-land business assets would be increased to NZ \$100 million (US \$66.4 million), where a foreigner proposes to take control of 25 percent or more of a business. Purchases of land over 5 hectares would require the commission's review, as would land in certain sensitive or protected areas. For land purchases, foreigners who do not intend to live in New Zealand would have to provide a management proposal covering any historic, heritage, conservation or public access matters and any economic development planned. That proposal would have to be approved and could be made a condition of consent. In addition, investors would be required to report regularly on compliance with the terms of the consent. Overseas persons would continue to have to demonstrate the necessary experience to manage the investment. Any application involving land in any form still would have to meet a national interest test. The proposed legislation would transfer the OIC's functions to a unit within the government agency Land Information New Zealand.

In practice, the OIC approval requirements have not been an obstacle for U.S. investors. Very few applications have been turned down (only 28, versus 1,223 granted, from 1999-2003), and those usually involved land intended for farming purposes, residential subdivision or accommodation. In 2003, eight applications were refused, compared to nine in 2002.

Net investment by foreigners amounted to NZ \$1.6 billion in 2003, the OIC reported. Australia (NZ \$3.647 billion) was the largest net investor in New Zealand in 2003, followed by the United States (NZ \$1.953 billion) and Austria (NZ \$254 million).

For most countries except Australia, the stock of foreign direct investment (FDI) in New Zealand has declined from the late 1990s, when FDI spiked as a result of a massive wave of government privatization. Australia, which has a Closer Economic Relations agreement with New Zealand, has posted an

increase in FDI stocks in New Zealand, partly arising from the purchases of New Zealand banks by their Australian counterparts.

Very few government-owned enterprises remain to be privatized. The government has not discriminated against foreign buyers, but has limitations on foreign ownership of Air New Zealand and Telecom New Zealand.

The New Zealand government offers virtually no incentives for foreign investment, except for a tax incentive for large-scale film and television projects produced in the country. A stable, low-inflation environment and a skilled, cost-effective labor force are viewed as the strongest incentives for investment.

There is no capital gains tax. New Zealand has agreements banning double taxation with 24 countries, including the United States. The corporate tax rate is 33 percent for all companies, domestic and foreign. The personal tax rate for most foreign investors (from the combined effects of New Zealand's nonresident withholding tax and company tax) also is 33 percent, although the maximum personal tax rate is 39 percent.

Under legislation passed in 1995, foreign firms and investors were granted national treatment on corporate taxes; transfer-pricing rules were aligned so that New Zealand adheres to Organization for Economic Cooperation and Development (OECD) practices; and, thin capitalization regulations were tightened to discourage foreign companies from using excessive debt to avoid New Zealand taxes. The rules offer foreign investors greater transparency and predictability.

The Overseas Investment Commission operates a comprehensive Internet website ([www.oic.govt.nz](http://www.oic.govt.nz)) that explains New Zealand investment policy and walks potential investors through the application process.

Investment New Zealand, the government's investment promotion agency, works with offshore investors to facilitate investment in New Zealand. Information about the agency and contact details for its offices in the United States can be obtained from its website [www.investnewzealand.govt.nz](http://www.investnewzealand.govt.nz).

#### CONVERSION AND TRANSFER POLICIES

There are no restrictions on the inflow or outflow of capital, and the currency is freely convertible. Full remittance of profits and capital is permitted through normal banking channels.

#### EXPROPRIATION AND COMPENSATION

Expropriation has not been an issue in New Zealand, and there are no outstanding cases.

#### DISPUTE SETTLEMENT

Investment disputes are extremely rare, and there have been no major disputes in recent years. The mechanism for handling disputes is the judicial system. New Zealand is a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States and to the New York Convention of 1958. Property and contractual rights are enforced by a British-style legal system. The highest appeals court is a domestic Supreme Court, which replaced the Privy Council in London and began hearing cases July 1, 2004.

#### PERFORMANCE REQUIREMENTS/INCENTIVES

There are no performance requirements or incentives associated with foreign investment, although the government has proposed legislation requiring foreign buyers of land to report periodically on their compliance with the terms of the government's consent to their purchase.

#### RIGHT TO PRIVATE OWNERSHIP AND ESTABLISHMENT

There are no restrictions on the right to establish, own and operate business enterprises, aside from the requirement for OIC approval of foreign investments over NZ \$50 million and investments in commercial fishing and rural land and limits on investments in Air New Zealand and Telecom New Zealand.

A number of government entities have been transformed into state-owned enterprises (SOEs), and a number of SOEs have been privatized. Aside from the government equity holdings established at the time of formation, SOEs are provided no special advantages in their competition with private entities. In general, there has been no restriction on foreign purchasers in the privatization of assets. There is no limit on foreigners buying into any sector or acquiring 100 percent ownership of any firm, except for the ceilings on foreign ownership stakes in Air New Zealand and Telecom New

Zealand. To preserve landing rights, no more than 49 percent of Air New Zealand, the national flagship carrier, can be owned by foreigners. A single foreign investor can hold a maximum of 49.9 percent of the total voting shares of Telecom New Zealand. In addition, under the Fisheries Act 1983, foreigners can only lease New Zealand fishing rights.

#### PROTECTION OF PROPERTY RIGHTS

New Zealand is a member of the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, the Berne Convention and the Universal Copyright Convention. It fulfilled its TRIPS Agreement obligations in most respects with the passage of the Copyright Act 1994; Layout Designs Act 1994; and 1994 amendments to the Patents Act 1953, the Trade Marks Amendment Act 1953, and the Plant Variety Rights Act 1987. Amendments made to existing intellectual property statutes came into force January 1, 1995. The Trade Marks Act 2002 created new criminal offenses for counterfeiting trademarks and increased the penalties for pirating copyright goods. Legislation has been proposed to bring the Patents Act 1953 into closer conformity with international standards by tightening the criteria for granting a patent, from a patentable invention being new in New Zealand, to being new anywhere in the world and involving an inventive step.

In two areas, New Zealand's legislation goes beyond its TRIPS obligations. New Zealand's 1994 copyright legislation allows its regime to keep pace with technological changes and ensures compliance with the 1971 revision of the Berne Convention. Brought into force in 1996, the Geographical Indications Act 1994 establishes a regime for protecting New Zealand and international geographical indications (e.g., for wine) from misleading or deceptive use.

New Zealand has not signed or ratified the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty. The government in June 2003 proposed amendments to the Copyright Act 1994 that, if enacted, would allow it to determine whether to accede to the two treaties.

In May 1998, the Copyright Act and the Medicines Act were amended to remove a prohibition on parallel importing. This amendment allows importation of legitimate goods into New Zealand without the permission of the holder of the intellectual property rights. Enacted by the government to expand discounted prices for consumers, it also has resulted in an increase in pirated goods entering New Zealand. Manufacturers have expressed concern that parallel imports will result in damage to their reputation due to imports of dated products, products not suitable for New Zealand conditions, and after market servicing problems. In addition, parallel importing limits returns to the holders of intellectual property by not allowing control over market targeting, such as timing of releases. In October 2003, the government enacted a ban on the parallel importation of films, videos and DVDs for the initial nine months after a film's international release.

#### TRANSPARENCY OF THE REGULATORY SYSTEM

The Commerce Commission administers the Commerce Act 1986, which was amended by the Commerce Amendment Act 2001 and governs restrictive trade practices. In general, price fixing and contracts, arrangements or understandings that have the purpose or effect of substantially lessening competition in a market are prohibited, unless authorized by the Commerce Commission. Before granting its authority, the commission must be satisfied that the public benefit would outweigh the reduction of competition.

The Commerce Commission also may block a merger or takeover that would result in the new company gaining a dominant position in the market. The use of a dominant market position to restrict, prevent, hinder, deter or eliminate various specified types of competition is contrary to the Act's provisions. However, the enforcement or attempted enforcement of any right under any copyright, patent, protected plant variety, registered design or trademark do not necessarily constitute abuses of a dominant position. Suppliers' use of resale price maintenance is prohibited. Advice should be obtained on the application of the Act before the establishment of exclusive distribution, selling and franchising arrangements in New Zealand.

Reforms adopted since 1984 have included deregulation as a primary objective. The most salient examples are the financial and telecommunications sectors, although the effort has been broad-based.

To ensure competition in "natural monopolies," such as telecommunications and electricity, the government has considered increased oversight. Motivated largely by the power industry's failure to provide adequate electricity reserve capacity, the government set up an Electricity

Commission, which started supervising the electricity industry and markets March 1, 2004. Under the 1997 WTO Basic Telecommunications Services Agreement, New Zealand has been committed to the maintenance of an open competitive environment in the telecommunications sector. Key reforms of the sector, through legislation enacted in December 2001, included appointment of a commissioner responsible for resolving commercial disputes. In November 2004, the government began a review of the Telecommunications Act 2001, aimed at improving the monitoring and enforcement of agreements involving regulated services. The review was open to public comment until February 4, 2005. The Ministry of Economic Development will consider the submissions before making recommendations to the government on possible legislative changes.

#### EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

Since the removal of financial-sector controls in the mid-1980s, money market activity has grown rapidly, particularly foreign exchange trading and a sizable secondary market in government securities. A range of financial instruments, including forward contracts, options and exchange rate futures, and the use of hedging devices to reduce interest rate and exchange rate risks have been introduced. The New Zealand banking system consists of 16 registered banks with more than 90 percent of their combined assets under the ownership of foreign banks (Australian banks account for 87 percent of the total). Kiwibank, introduced in 2001 by the Labour-Alliance government and operated out of the NZ Post Shops, is the only sizable New Zealand-based institution. Aggregate banking system capital adequacy has been above minimum requirements since the introduction of Basel-based reporting in 1989. Access to the credit system is unrestricted.

The Securities Commission, under the Securities Act 1978 and amendments, regulates the issuance of securities. The Act requires prospectuses for public offerings of new securities and prescribes the information that must be disclosed. An amendment in 1988 provides civil remedies for loss or damages resulting from insider trading. The Securities Markets and Institutions Bill in December 2002 gave the Securities Commission additional powers to increase its effectiveness in monitoring and enforcement, including enforcement of laws against insider trading. Stocks in a number of New Zealand-listed firms also are traded in Australia and in the United States.

A takeovers code that took effect July 1, 2001, requires any person who tenders an offer for 20 percent or more of a publicly traded company to make that same offer to all shareholders.

Legal, regulatory, and accounting systems are transparent. Accounting is based on elements of British and U.S. systems. The Institute of Chartered Accountants of New Zealand has developed Statements of Standard Accounting Practice (SSAP) that are mandatory for its members. All companies listed on the Stock Exchange must comply with the SSAP and issue annual reports and abbreviated semiannual reports to shareholders. The Financial Reporting Act 1993 requires firms to comply with financial accounting standards prescribed by an Accounting Standards Review Board established by the Act. The mandatory standards vary depending on the type of firm involved.

Small, publicly held companies not listed on the New Zealand Stock Exchange (NZSE) may include in their constitution measures to restrict hostile takeovers by outside interests, domestic or foreign. However, NZSE rules prohibit such "poison pill" measures by its listed companies.

Foreign-owned or controlled companies are not foreclosed from participation in domestic industry standards-setting organizations.

#### POLITICAL VIOLENCE

New Zealand is a stable democracy. There has been no significant political violence since the Maori wars in the mid-1800s.

#### CORRUPTION

New Zealand is renowned for its efforts to ensure a transparent, competitive, and corruption-free government procurement system. It is government policy to give local producers a fair chance to compete, but departments are responsible for limiting costs and seeking the best value for the money. Stiff penalties against bribery of government officials as well as those accepting bribes are strictly enforced. New Zealand ranked second in the world on Transparency International's corruption-free scale. New Zealand has ratified the OECD Anti-Bribery Convention. New Zealand has opted not to join the GATT/WTO Government Procurement Code because the benefits would not justify the compliance costs amid New Zealand's totally deregulated

government procurement system, according to the government. Nonetheless, New Zealand supports multilateral efforts to increase transparency of government procurement regimes.

#### BILATERAL INVESTMENT AGREEMENTS

New Zealand in 1988 signed an agreement with China on the promotion and protection of investment and in 1992 signed a Trade and Investment Framework Agreement with the United States. New Zealand's free-trade agreement with Singapore took effect in 2001 and includes an investment chapter. An agreement concluded by New Zealand and Thailand in November 2004 also includes an investment chapter, but at the end of 2004 had not yet been signed or implemented. New Zealand adheres to the OECD Code of Liberalization of Capital Movements and the OECD Code on Current Invisible Operations.

#### OPIC AND OTHER INVESTMENT INSURANCE PROGRAMS

As an OECD member country and developed nation-state, New Zealand is not eligible for OPIC programs, nor does the New Zealand government provide a program like OPIC to its investors. New Zealand does not intend to become a member of the Multilateral Investment Guarantee Agency. It has a small export credit program that so far has not attracted great commercial interest.

#### LABOR

Unemployment was 3.8 percent of the labor force in September 2004. The demand for labor has been strong, and shortages of skilled labor remain a problem throughout the economy. Several factors have caused the shortages, including lower wages compared to those in Australia, where any New Zealander can legally work; lack of training; and, falling immigration numbers. Labor shortages are especially pronounced in the construction industry.

Employees are entitled to a minimum three-week paid annual leave after the first year of employment. The mandatory minimum will be increased to four weeks' annual leave beginning April 1, 2007. Paid leave also can be taken for illness, bereavement or parenthood.

Unions have the right to organize and collectively bargain. About 21 percent of New Zealand's wage and salary workers are union members.

The Employment Contracts Act 1991 (ECA) ended compulsory unionism and prohibited certain strikes. Overall, the law spurred a reduction in union membership, although some unions grew, particularly through mergers. In 2000, the Labour-led government replaced the ECA with the Employment Relations Act (ERA), contending the change was necessary to restore balance in the powers of employers and employees. The ERA promotes collective bargaining, strengthens unions and places strong emphasis on good faith bargaining. Employment relationships are based on contracts, and workers may negotiate an employment contract with their employer individually or collectively. Despite the business sector's initial fears about the ERA, workdays lost to strikes have continued a steady decline that began in the 1990s. In 2003, there were 28 work stoppages, involving strikes and partial strikes. A 2004 revision of the ERA strengthened its collective bargaining and good faith provisions. It provides additional protections for workers in the event of company ownership changes. It also allows unions to charge bargaining fees for non-union workers who enjoy the same wages and conditions negotiated by unions for their members, although workers can opt out of paying the fee if they negotiate their own contracts. The government made a number of changes to initial drafts of the bill to address business concerns. Prospective entrants to the New Zealand market are encouraged to examine the details of the labor legislation. (Information on New Zealand's employment law is available on the Department of Labour's website, [www.ers.dol.govt.nz](http://www.ers.dol.govt.nz).)

Minimum wage and workplace safety regulations are incorporated under other laws. An Employment Relations Authority handles disputes, and its decisions may be appealed in an Employment Court.

#### FOREIGN TRADE ZONES/FREE PORTS

New Zealand does not have any foreign trade zones or free ports.

#### FOREIGN DIRECT INVESTMENT STATISTICS

The stock of foreign direct investment (FDI) in New Zealand rose to NZ \$64.289 billion (US \$42.7 billion) as of March 31, 2004. That was equivalent to 46.8 percent of New Zealand's GDP. (GDP in the year ending March 31, 2004, was estimated at NZ \$137.42 billion using the GDP of NZ \$118.09 billion in 1995/96 prices multiplied by a price deflator of 1.146. Source: Statistics New Zealand)

The privatization of many state-owned enterprises and monopolies in the 1990s brought a flood of U.S. investment into New Zealand over a five-year period, 1994-1998. U.S. investment approvals amounted to NZ \$8.7 billion during the period, or the second-largest share at 24.8 percent of total foreign investment approved, with Australia taking a 27.5 percent share.

The U.S. share of FDI stock in New Zealand peaked at around 28 percent in 1997 before sliding to 10 percent by March 2003.

U.S. investment is concentrated in the telecommunications, forestry, transportation, food processing and electronic data processing sectors. Increased U.S. investments are being directed into petroleum refining and distribution, financial services, information technology and biotechnology.

New Zealand's direct investment abroad was NZ \$13.39 billion (US \$8.89 billion) as of March 31, 2004, or the equivalent of 10 percent of GDP.

End draft.  
Swindells